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August 4, 2023

via the NYSCEF system:

Hon. R. Bruce Cozzens, J.S.C.
Supreme Court of the State of New York
Nassau County, Part 1
100 Supreme Court Drive
Mineola, New York 11501

Re: *Maidenbaum v. Cardis (Fischman Contempt Proceeding)*,
Nassau Co. Index No. 604610//2016

Your Honor:

I represent petitioner Shalom Maidenbaum in this post-judgment supplemental (collection) proceeding.

Maidenbaum respectfully requests that, following the parties' presentations of their positions at the Teams Meeting scheduled for August 9, 2023 at 2:30 pm ([see NYSCEF 671](#)), the Court sign the proposed order Maidenbaum filed earlier today ([NYSCEF 685](#)). If entered, that proposed order would sever the claims against **Aaron Fischman** from those against the remaining defendants, including Choshen Israel, LLC, which filed a bankruptcy case under Chapter 11 (Reorganization) of the United States Bankruptcy Code on August 2. *See* [NYSCEF 683](#). The order would further direct that defendant Aaron Fischman appear at the Courthouse for a deposition on August 14, 2023 and bring with him documents that Maidenbaum previously subpoenaed ([NYSCEF 685](#)), as this Court previously ordered on August 1 ([NYSCEF 679](#)).

Predictably, the day following this Court's August 1 order, Choshen, *represented by the same bankruptcy attorney who recently appeared for Fischman* in Fischman's own short-lived bankruptcy case¹, filed a Chapter 11 petition and Mr. Fischman, as he has done many times in the past, contends that his deposition and document production should not proceed. *See* [NYSCEF 682](#).

Mr. Fischman's new argument is no less frivolous than his prior attempts – both here and before Justice Murphy – to avoid the oft-ordered deposition and document production. The *Choshen* bankruptcy does *not* stay proceedings against a co-defendant, such as Mr. Fischman,

¹ *In re Aaron D. Fischman*, Case No. 23-35368-cgm (Bankr., S.D.N.Y.), dismissed on July 11, 2023

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especially, as in this case, where the bankrupt and non-bankrupt defendants are jointly liable to the plaintiff. Katz v. Mount Vernon Dialysis, LLC, 121 A.D.3d 856, 857, 994 N.Y.S.2d 661, 662-663 (2d Dept. 2014) (“Where a defendant in an action files for chapter 11 bankruptcy relief, the automatic stay provisions of 11 U.S.C. § 362(a) do not extend to the non-bankrupt defendants[.]”); Miller v. The City of New York, 2020 WL 1902409, *4-5 (Sup. Ct., New York Co., April 15, 2020) (severance ordered following bankruptcy filing by one defendant to permit case to proceed against non-bankrupt defendant since they were jointly liable to the plaintiff).

A severance can be ordered in the discretion of the Court, though a notice of motion for that relief has not been filed. Marine Midland Bank, N.A. v. Cafferty, 174 A.D.2d 932, 935, 571 N.Y.S.2d 628, 631-632 (3d Dept. 1991). Maidenbaum therefore requests that, following the Teams Meeting on August 9, the Court approve and enter the proposed order filed at NYSCEF 684.

Respectfully submitted,

/s/ Eric W. Berry
Eric W. Berry

cc: all counsel and *pro se* parties (by the ECF system)